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IN THE MATTER OF THE PETITION OF RAM DAS MAGHI.

Court. The sentence passed however appears harsh. I reduce the term of imprisonment to fifteen days. The fines and terms of imprisonment in default will stand." *Held*, following the decision in *Kamruddin Dai* v. *Sonaton Mandal* (1) that it was not a judgment within the meaning of ss. 367 and 424 of the Criminal Procedure Code.

THIS case merely followed the decision in *Kamruddin Dai* v. *Sonaton Mandal* (1), holding on the authority of that case that the judgment given by the Magistrate was not a judgment in accordance with ss. 367 and 424 of the Code. The Court ordered the judgment to be set aside and directed that the appeal should be reheard.

Baboo *Iswar Chandra Chakrabati* for petitioners.

Baboo *Durga Mohun Das* for opposite party.

J. V. W.

APPELLATE CIVIL.

Before Mr. Justice McDonell and Mr. Justice Beverley.

O. STEEL & CO. (DECREE-HOLDERS) *v.* ICHCHAMOYI CHOWDHRAIN AND ANOTHER (JUDGMENT-DEBTORS.)°

1886 *March* 18.

Appeal—Order staying execution of Decree—Civil Procedure Code, 1882, *ss.* 2, 243, 244—*Decree.*

An order under s. 243 of the Civil Procedure Code staying execution of a decree determines a question relating to the execution of the decree within the meaning of s. 244, and is therefore a decree within the meaning of s. 2: an appeal therefore lies from such order.

IN proceedings in execution of a decree the judgment-debtors applied for stay of execution on giving security, on the ground that they had, in the same Court in which the execution proceedings were being carried on, brought a suit against the decree-holders for possession and mesne profits of the land in connection with the suit in which the decree under execution had been obtained. The Subordinate Judge made an order on the application that the execution proceedings should be stayed, but as the day the

° Appeal from Order No. 384 of 1885, against the order of Baboo Ram Coomar Pal Chowdhuri, Subordinate Judge of Sylhet, dated the 3rd of September 1885.

(1) I. L. R., 11 Calc., 449.

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application was filed was the very day fixed for the execution sale, and the decree-holder had been put to considerable cost in enforcing the decree, the Subordinate Judge ordered the judgment-debtor to pay Rs. 300 in part satisfaction, as well as to give security for payment of the remaining amount.

From this order the decree-holders appealed, and a preliminary objection was taken that no appeal lay.

Mr. *Adkin* for the appellants.

Baboo *Jogesh Chundra Roy* for the respondents.

The judgment of the Court (MCDONELL and BEVERLEY, JJ.) was as follows :—

This is an appeal against an order passed under s. 243 of the Civil Procedure Code. A preliminary objection has been taken that no appeal will lie against an order made under that section, and we have been referred to a decision to that effect in *Nihal Chand* v. *Rameshari Dassee* (1). We are not disposed to follow that decision, partly because we think that, under the definition of decree in s. 2 of the Civil Procedure Code, the order made under s. 243 did determine a question mentioned or referred to in s. 244 *viz.*, a question relating to the execution of the decree; that is to say, the order determined the question whether the decree should be executed or whether execution should be stayed. In support of this view we find several reported decisions—*Kristomohiney Dassee* v. *Bama Churn Nag Chowdhry* (2), *Luchmeeput Singh* v. *Sitanath Doss* (3), and *Ghazidin* v. *Fakir Baksh* (4). We are also aware of other decisions to the same effect which have not been reported. On the other hand, the case to which we have been referred is, so far as we are aware, the only one to the opposite effect, and the reasons given therein do not altogether commend themselves to us. Then, on the merits, it appears that the decree in this case was on account of costs which were decreed to the appellants in consequence of the respondent's failure in a previous suit in respect of the same matter. The respondent was allowed liberty to bring a fresh suit, and the costs of the previous proceedings were given against

(1) I. L. R., 9 Calc., 214.
(2) I. L. R., 7 Calc., 733.
(3) I. L. R., 8 Calc., 477.
(4) I. L. R., 7 All., 73.

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him. But apparently by some oversight it was not made a condition, as it usually is in such cases, that payment of the costs should be a condition precedent to the institution of the fresh suit. We think, however, that this was a case in which it was incumbent upon the Court to see that the costs were paid within a reasonable time, and not a case in which further time should be given merely because a fresh suit has been instituted. We, therefore, set aside the order of the lower Court staying the execution proceedings, and direct that these proceedings do proceed. The appellants will be entitled to their costs in this Court.

J. V. W. *Appeal allowed.*

Before Mr. Justice Mitter and Mr. Justice Agnew.

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March 25.

BHOBANI MAHTO (PLAINTIFF) *v.* SHIBNATH PARA (DEFENDANT.)*

Registration Act (XX of 1866), s. 17, cl. 4—Zur-i-peshgi lease—"Leases not exceeding one year," Meaning of.

Leases which were exempted from the operation of s. 17, cl. 4, Act XX of 1866, were leases the term of which was one year certain.

Where a *zur-i-peshgi* lease was granted for one year, but with a stipulation that unless the loan were repaid within that time it should continue in force, *held*, that such a lease came within the words of s. 17, cl. 4, Act XX of 1866, "leases of immovable property for any term exceeding one year" of which registration was compulsory.

THIS was a suit for arrears of rent. The plaintiff based his claim upon an unregistered *zur-i-peshgi* lease which, though it purported to be for the term of one year, contained a stipulation that the lease should remain in force until the loan was repaid. Both the lower Courts agreed in holding that the document was one of which registration was necessary under s. 17, cl. 4, Act XX of 1866, and refused to admit it in evidence.

On appeal to the High Court it was contended that the lease did not require to be registered.

* Appeal from Appellate Decree No. 2021 of 1885, against the decree of Moulvie Mahomed Nurul Hossein, Subordinate Judge of Sarun, dated the 6th of August 1885, reversing the decree of Baboo Harihar Charan, Munsiff of Chuprah, dated the 1st of December 1884.